

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1535 of 1984

with

SPECIAL CIVIL APPLICATION No 1536 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALDEVPRASAD B KELLA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1535 of 1984
MR KG VAKHARIA for Petitioners
MRS. S.K.Mandvia, AGP, for the Respondent.
2. Special Civil Application No 1536 of 1984
MR KG VAKHARIA for Petitioners
MRS. S.K.Mandvia, AGP, for the Respondent.

CORAM : MR.JUSTICE B.C.PATEL and
MISS JUSTICE R.M.DOSHIT

Date of decision: 11/01/96

ORAL JUDGEMENT

By Notification Annexure-A to Special Civil Application No.1535 of 1984 the lands referred in the schedule were sought to be acquired under the provisions contained in Land Acquisition Act 1984 as the land was needed for a public purpose.

These petitions are arising out of the proceedings initiated under one notification. The petitions are disposed of by a common judgment.

Reading that notification it is also clear that the notification under section 4 is dated 1-4-1980. Relying on this date it is contended that the notification Annexure-A under section 6 of the Act has not been issued within a period of 3 years from the date of the publication of Notification under sub-section (1) of Section 4 of the Act. It is further contended that the hearing under section 5-A has not been granted and, therefore, proceedings are bad.

It is required to be noted that the petitioner has not annexed the notification which is published in the official gazette under section 4 of the Act and has picked up the date which is the date of the notification and not the date of the publication and it is contended that the proceedings are not concluded within a period of three years. Section 4(1) of the Land Acquisition Act at the relevant time was as under :

"4. Publication of preliminary notification and powers of officers thereupon.-(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.".

Reading the aforesaid section it is very clear that it contemplates the publication of the notification in the Official Gazette. Section 6(1) of the Act as it stood at the relevant time was as under :

"6. Declaration that land is required for a public purpose.-(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5A, sub-section (2), that any particular

land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declaration may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2).

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication :

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority."

The learned Advocate submitted that proviso to sub-section (1) of section-6 makes it very clear that the declaration which is required to be made shall not be after the expiry of three years from the date of the publication of the notification under section 4 in the Official Gazette.

In the affidavit-in-reply filed by Deputy Collector, Palanpur, it is categorically stated that notification under section 4 of the Act was published in the Government gazette on 8-1-81. There is no reason why not to accept the word of the Deputy Collector. The petitioners could have placed on record the notification published in the gazette. Hence we find that the notification under section 6 is published within the period mentioned in Section 6 and, therefore, there is no merit in this ground.

The next ground urged by the petitioner is that hearing was not given. In reply it is pointed out on oath that the petitioner through his lawyer raised objections and were heard on 20-9-82; while in the other matter being Spl.Civil Application No.1535 of 1984 the Deputy Collector has pointed out that the petitioner filed objections and was personally heard on 5-12-81. Thus, it is very clear that both the petitioners were heard in the matter. If that be so, it is clear that

after hearing the petitioners as required under the provisions contained in Section 5-A, notification has been issued under section 6 within the period stipulated and hence we find no merit in the petitions and the petitions are dismissed with costs.

In Special Civil Application No.1535 of 1984 on behalf of the petitioner it is stated that he does not press for the amendment. As substantive petition has been filed the court has not dealt with the same. Rule is discharged.